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EXAMINER

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3688

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/296,120
Filing Date: April 21, 1999
Appellant(s): REDDIN ET AL.

Daniel J. Warren
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/20/2006 appealing from the Office action mailed 06/02/2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: the prosecution history featured on pages 7-11 of the Brief should not be part of the arguments.

NEW GROUNDS OF REJECTION

Claims 1, 2, 4-19, 21-23, 25-28, 30-43, 53, 59-65, and 67 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,649,114	DEATON	7-1997
5,974,396	ANDERSON	10-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 59 is rejected under 35 U.S.C. 101 for not producing a useful, concrete and tangible result. Indeed, the claim recites a process for receiving consumer lifestyle data corresponding to representative activities of a predetermined type of consumer and storing data corresponding to said representative activities, receiving consumer market data corresponding to representative uses of said item and storing data corresponding to said representative uses, determining a relationship between said data corresponding to said representative activities and said data corresponding to said representative uses and storing said relationship in a marketing database. Here, following the storing of the relationship data in a marketing database, the process stops and nothing was actually done with the relationship data.

Claims 1-2, 21-23, 25-28, 30-43, 53, 59-65 and 67 are rejected under 35 U.S.C. 102(b) as being anticipated by Deaton et al, US Patent 5,649,114.

As per claim 1, Deaton et al discloses a method comprising the steps of:

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Gathering the consumer lifestyle and the consumer market data or purchase history data (Here the market data or purchase history data contain lifestyle data, such as the type of product, certain type of a product, a particular size of a product or a particular brand's name consumed by the customer, that may be directly read or inferred from the market data or purchase history data. In this instance, the market data include lifestyle data. In another instance, the lifestyle data may be inferred from the market data such that if the consumer consumes an expensive brand's name, then the consumer belongs to a certain class or demographics, has a good paying job, lives in an expensive neighborhood, owns a house, has a college degree etc.-Col. 71" 31-45; col.72: 35-59);

Determining one or more representative activities of said predetermined type of consumer based upon the consumer lifestyle data, such as the customer's purchases made at various participating retailers and recorded in a database wherein the customer's purchase history, including volume purchase data, frequency purchase data, timing of purchase data, recency of purchase data, preference data and so on, is established so that the customer can be specifically targeted based on the consumer lifestyle data or purchase data or market data as explained above (It is herein understood if a customer purchases a certain type of coffee brand, then the customer will prepare and drink the coffee while watching TV, talking to a friend on the phone, reading a newspaper, etc., (representative activities) and the customer's purchase is recorded such that a coupon (generating a message) can be offered to the customer on the same or a different coffee brand. Further, the customer's purchase history is

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analyzed to determine an estimated product use (representative uses of an item) and generate a timely coupon (timely message), associated with the product, for the customer based on the product use, which indicates when the product should be replaced (col. 71: 31-67; col. 86:65 to col. 89: 22; col. 81:56 to col. 82: 11; figs. 27-32; col. 10: 30-67);

Determining one or more representative uses of said item by said predetermined type of consumer, based upon the customer's purchase pattern (market data) or by tracking the customer's purchase cycle of a product to anticipate when the customer's may run out of the product and need to replace the said product during said one or more representative activities (wherein the customer's purchase history indicates usage data related to a purchased product and wherein the usage data indicate when this product should be replaced and a message or a coupon, associated with the product, is generated and offered to the customer based on said usage data or based on the anticipated replacement time or date (col.71: 31-67; col. 10: 30-67); and

Creating demand for said item by said predetermined type of consumer, based upon said one or more representative uses of said item by said predetermined type of consumer during said one or more representative activities through the selection of messaging (coupon), brands, packaging or merchandising, using the consumer's buying pattern (market data and/or lifestyle data) corresponding to the item or product or by tracking the customer's or consumer's purchase cycle of the product to anticipate when the customer may run out of the product and need to buy or re-order or replace

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the product, wherein the customer's purchase history indicates usage data related to a purchased product and wherein the usage data indicate when this product should be replaced and a (advertising) message or a coupon, associated with the product, is generated and offered to the customer based on said usage data or based on the anticipated replacement time or date (col.71:31-67; col. 10: 30-67).

Claim 67 substantially recites limitations already addressed in claim 1 and thus, these limitations of claim 67 are rejected under a similar rationale as applied to claim 1 above.

As per claims 2 and 4, Deaton et al further disclose a method comprising the steps of gathering lifestyle information through the purchase history or market data of an individual consumer during a particular period of time and subsequently performing an analysis of such lifestyle information so that a personal discount coupon can be provided to the individual customer redeemable on a product that the consumer has previously indicated a tendency to buy (col. 71:31-45; figs. 29; col. 10: 30-67).

Furthermore, Deaton discloses a system for determining one or more "representative activities" of a predetermined type of consumer based upon the consumer lifestyle data, such as the customer's purchases or market data made at various participating retailers and recorded in a database wherein the customer's purchase history, including volume purchase data, frequency purchase data, timing of purchase data, recency of purchase data, preference data and so on, is established so that the customer can be specifically targeted based on the consumer lifestyle data or purchase data or market data as

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explained above (in claim 1) (It is herein understood if a customer purchases a certain type of coffee brand, then the customer will prepare and drink the coffee while watching TV, talking to a friend on the phone, reading a newspaper, etc., (representative activities) and the customer's purchase is recorded such that a coupon (generating a message) can be offered to the customer on the same or a different coffee brand. Further, the customer's purchase history is analyzed to determine an estimated product use (representative uses of an item) and generate a timely coupon (timely message), associated with the product, for the customer based on the product use, which indicates when the product should be replaced-Col. 71: 31-67; col. 86:65 to col. 89: 22; col. 81:56 to col. 82: 11; figs. 27-32; col. 10: 30-67);

As per claims 5-19, 23, 25-28, 30-31, 34-37, 39 and 41-42, Deaton further discloses a method for customer promotion (advertising) wherein an identified customer using a check or credit card at a POS in a retail store during a shopping trip to pay for groceries and based on the identified customer prior shopping history, collected over a specific period of time, stored in a database associated with CVC Master Controller 965 of fig. 19, he will receive a discount coupon redeemable during a future transaction on a particular promoted or advertised product, such as a brand of coffee, for which the said customer has previously indicated a tendency to buy upon analyzing his prior shopping transaction using conventional data mining and niche marketing techniques. This customized discount coupon is intended not only to encourage the identified customer to return to the store to buy more items, but also to promote the store products in general. This discount coupon, promoting this coffee brand, can be communicated to

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the identified customer at the POS in the retail store in a printed form by printing a hard copy using receipt printer 969 connected to ECR of fig. 20 or the discount coupon can be electronically displayed to the customer on ECR display 968 of fig. 20 or stored in the database associated with CVC Master Controller 965 of fig. 19 or encoded on the customer's smart card 53 (col. 4:52 to col. 10: 67; col. 71: 31-45; col. 89:66 to col. 90: 34; figs. 29; col. 67:23 to col. 68: 19).

As per claims 21 and 22, it is implicitly supported in the prior art that a predetermined type of packaging will be carefully selected to package a promoted product based on some predefined parameters associated with a target market, thereby making the promoted product or item more attractive to the targeted audience. For example, it is understood that Deaton's promoted coffee will be sold in a carefully selected package, as one skilled in the art would have anticipated.

As per claims 32, 33, 38 and 43, it is implicitly supported, in the current reference, that advertised products or promoted products or specials can be communicated to the customers through large posters displayed within the store or outside the store windows, through in-store kiosks, handouts, flyers, mailers (e.g. mailing coupons related to promoted products to targeted customers), newspapers, TV monitors/displays (virtual environment) located within customers' homes away from the stores, etc. (col.72: 35-48).

As per claim 40, it is anticipated in the Deaton et al system that an identifier customer may receive a discount coupon through the mail based on his purchase

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history criteria (col. 10: 63-67; col. 67: 23-39). It is also understood in the system of Deaton et al that a customer will originally fill out an application, where he provides customer's information, before a customer's personal check can be accepted by the retail store as payment. Further, the customer's information provided in the application can be used to profile the identified customer.

Claim 53.

Gathering the consumer lifestyle and the consumer market data or purchase history data (Here the market data or purchase history data contain lifestyle data, such as the type of product, certain type of a product, a particular size of a product or a particular brand's name consumed by the customer, that may be directly read or inferred from the market data or purchase history data. In this instance, the market data include lifestyle data. In another instance, the lifestyle data may be inferred from the market data such that if the consumer consumes an expensive brand's name, then the consumer belongs to a certain class or demographics, has a good paying job, lives in an expensive neighborhood, owns a house, has a college degree etc.-Col. 71: 31-45; col.72: 35-59);

Determining the daily (or one or more representative) activities of said predetermined type of consumer based upon the consumer lifestyle data, such as the customer's purchases made at various participating retailers and recorded in a database wherein the customer's purchase history, including volume purchase data, frequency purchase data, timing of purchase data, recency of purchase

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data, preference data and so on, is established so that the customer can be specifically targeted based on the consumer lifestyle data or purchase data or market data as explained above (It is herein understood if a customer purchases a certain type of coffee brand, then the customer will prepare and drink the coffee while watching TV, talking to a friend on the phone, reading a newspaper, etc., (representative activities) and the customer's purchase is recorded such that a coupon (generating a message) can be offered to the customer on the same or a different coffee brand. Further, the customer's purchase history is analyzed to determine an estimated product use (representative uses of an item) and generate a timely coupon (timely message), associated with the product, for the customer based on the product use, which indicates when the product should be replaced-Col. 71: 31-67; col. 86:65 to col. 89: 22; col. 81:56 to col. 82: 11; figs. 27-32; col. 10: 30-67);

Determining the needs of said beverage or item (or determining one or more representative uses of said item), such as coffee, soda, etc., by said predetermined type of consumer during the daily activities (representative activities), based upon the customer's purchase pattern (market data) or by tracking the customer's purchase cycle of a product to anticipate when the customer's may run out of the product and need to replace the said product during said one or more representative activities (wherein the customer's purchase history indicates usage data related to a purchased product and wherein the usage data indicate when this product should be replaced and a

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message or a coupon, associated with the product, is generated and offered to the customer based on said usage data or based on the anticipated replacement time or date-Col.71: 31-67; col. 10: 30-67); and

Marketing said beverage or said item, such as coffee, soda, etc., in association with said needs of said consumer for said beverage during said daily activities (Creating demand for said item by said predetermined type of consumer, based upon said one or more representative uses of said item by said predetermined type of consumer during said one or more representative activities) through the selection of messaging (coupon), brands, packaging or merchandising, using the consumer's buying pattern (market data and/or lifestyle data) corresponding to the item or product or by tracking the customer's or consumer's purchase cycle of the product to anticipate when the customer's may run out of the product and need to buy or re-order or replace the product, wherein the customer's purchase history indicates usage data related to a purchased product and wherein the usage data indicate when this product should be replaced and a (advertising) message or a coupon, associated with the product, is generated and offered to the customer based on said usage data or based on the anticipated replacement time or date (col.71:31-67; col. 10: 30-67)(col. 4:52 to col. 10: 67;col. 89:66 to col. 90: 34; figs. 29; col. 67:23 to col. 68:

Claim 59.

receiving data or purchase data, which includes lifestyle data as discussed in claim 1 above, at a POS during a current transaction corresponding to

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representative transaction activities of said predetermined type of consumer, who has previously indicated a tendency to buy an item based on his uses of the item (col. 71: 31-45);

storing said data or purchase data corresponding to said representative transaction activities of said predetermined type of consumer in marketing database or a database associated with CVC Master Controller of fig. 19;

receiving data or purchase data or market data corresponding to representative uses or consumption of said item or a certain type of coffee by said predetermined type of identified consumer, who uses a check or credit card at a POS (Anticipated step-col.71: 31-45);

storing said data or purchase data corresponding to said representative uses or consumption of said item or a certain type of coffee by said predetermined type of consumer in said marketing database or a database associated with CVC Master Controller of fig. 19, which holds consumer's purchase history (Anticipated step-col.71:31-45);

determining a relationship or correlation between said data corresponding to said representative transaction activities of said predetermined type of consumer and said data corresponding to said representative uses or consumption of said item or a certain type of coffee by said predetermined type of consumer, who uses a check or credit card at a POS (Anticipated step-col.71:31-45), upon analyzing, using conventional data mining and/or niche marketing techniques, the identified shopper's or predetermined

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type of consumer's prior shopping transaction during a series of preset number of weeks and subsequently, providing a discount coupon to the identified shopper or customer redeemable on the identified item, thereby making the coupon program more effective (through the selection of messaging (coupon), brands, packaging or merchandising); and

storing said relationship or correlation in said marketing database or a database associated with CVC Master Controller of fig. 19, which holds consumer's purchase history (Anticipated step-col.71: 31-45).

As per claims 60-62 and 65, it is anticipated in the system of Deaton that, upon analyzing, using conventional data mining and/or niche marketing techniques, an identified shopper's prior shopping transaction during a series of preset number of weeks and subsequently, upon meeting at least one predetermined criterion by the shopper, a discount coupon redeemable on an identified item (or a certain type of coffee) continuously used by the customer will be provided to the customer or shopper during a transaction at a POS, thereby making the coupon program distribution more effective (col. 71:31-45). Moreover, it is understood that a message regarding the said discount coupon will be communicated to the identified customer at the POS by printing the message (coupon data) using receipt printer 969 of fig. 20 or by encoding the message on the customer's smart card 53. Regardless of the medium used, a copy of the message, which authorizes the identified customer to redeem the discount coupon,

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will be electronically stored in a database or marketing database of CVC Master Controller 965 of fig. 19 for verification. Finally, the redemption data regarding the discount coupon on the identified item will be stored in the database for further processing so that the effectiveness (conversion rate) of the discount coupon distribution program can be measured, as anticipated by Deaton et al (col. 71: 31-45; col. 4:52 to col. 7: 54).

As per claims 63 and 64, it is anticipated in the Deaton's system for customer promotion that a store will compute the average transaction amount or selling price of an item, such as a brand of coffee, on which a discount coupon is given to an identified customer or shopper based upon his prior shopping transaction, thereby determining the average gross profit margin for said item.

Claims 1, 53, 59 and 67 are rejected under 35 USC 102(e) as being anticipated by Anderson, US Patent 5, 974, 396.

As per claims 1, 53, 59 and 67, Anderson discloses a method of and a system for gathering and analyzing customer and purchasing information, wherein the system permits a retailer or retail chain to process transactional information involving large numbers of consumers and consumer products. Product information is gathered that uniquely identifies a specific product by type and manufacturer and grouped into generic product clusters. Consumers are similarly grouped into consumer clusters based on

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common consumer demographics and other characteristics (lifestyle). Consumer retail transactions (market data) are analyzed in terms of product and/or consumer clusters to determine relationships between the consumers and the products. Product, consumer, and transactional data are maintained in a relational database. Targeting of specific consumers with marketing and other promotional literature (messaging) is based on consumer buying habits (market), needs, demographics (lifestyle), etc. A retailer queries the database using selected criteria, accumulates data from the database in response to that query, and makes prudent business and marketing decisions based on that response. Queried information from the database may be communicated to a printing subsystem for printing promotional literature (messaging) directed to one or more particular customers based on information stored in the database. The present system includes, inter alia, a printing subsystem connected to an analyzing means for printing promotional literature (messaging) directed to particular consumers based on cluster information stored in the relational database. In one embodiment, the printing subsystem generates and directs relevant promotional literature to certain consumers using names and address lists from the relational database. Promotional literature may include, for example, advertisements, newsletters, and coupons. With **the printing subsystem, customized promotional information (messaging) most relevant and most likely to be of interest to a particular consumer, based on his buying behaviors (market data) and demographics (lifestyle), is included in targeted promotional literature mailed to that consumer.** See abstract; figs. 1-13; Col. 2:24 to Col. 4: 60.

Please consider the entire reference.

NEW GROUND(S) OF REJECTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 2, 4-19, 21-23, 25-28, 30-43, 53, 59-65, and 67 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent a method claim must (1) be tied to another statutory class of invention (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)). A method claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. Here claims 1, 2, 4-19, 21-23, 25-28, 30-43, 53, 59-65, and 67 fail to meet the above requirements.

(10) Response to Argument

First of all, the Board is herein being asked to ignore the prosecution history, as featured on pages 7-11 of the Brief, since it is not part of the

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arguments that begin on page 11 with the 35 USC 101 Rejection of claim 59.

Furthermore, the Appellant's remarks related to the Claim Objections, as shown on page 16 under "Computer Executable Instructions", should be ignored for only arguments corresponding to the rejections of the claims can be included here.

Second of all, regarding the 101 Rejection of claim 59, the claim recites a process for receiving consumer lifestyle data corresponding to representative activities of a predetermined type of consumer and storing data corresponding to said representative activities, receiving consumer market data corresponding to representative uses of said item and storing data corresponding to said representative uses, determining a **relationship between said data corresponding to said representative activities and said data corresponding to said representative uses and storing said relationship in a marketing database**. Here, following the storing of the relationship data in a marketing database, the process stops and nothing concrete was actually done with the relationship data. Furthermore, **the preamble of the claim recites a process for promoting the use of an item by a predetermined of consumer and the claim or the body of the claim never achieves the goal stated in the preamble section- promoting an item**. Thus, contrary to the Appellant's contention, nothing concrete was achieved here.

Third of all, upon reviewing the Application and the appended claims, it is rather unclear what the Appellant is seeking exclusive patent rights for. In fact, the limitations recited in the claims represent the type of disclosure often found in marketing text books

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(see enclosed pages), but not in a patent application claims. In general, the metes and bounds of the claims or at least the independent claims are not defined so as to enable one having ordinary skills in the art to understand the subject matter recited therein. And the claims were examined based on what the Examiner can decipher therefrom.

First, the Appellant argues that the fundamental flaw in the rejection is that the customer scan data relied upon in Deaton is not the same consumer's activities and use data described in the claims and proceeds by defining "Consumer Lifestyle Data", "Representative Activities", "Representative Uses" and "Creating Demand". In response, the Examiner completely and respectfully disagrees with the Appellant's findings. Indeed, the consumer's data, such as market data, preference data, demographic data and so, read on the "Consumer Lifestyle Data", "Representative Activities" and "Representative Uses" as featured in the Office Action. Moreover, the specific definitions of those terms as featured in the Brief are not read into the claims, which are broadly interpreted or considered for what they actually disclose, but not for what the Appellant intends to recite therein (See Office Action). Here, although the claims are interpreted in light of the specification, nevertheless, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Having said that, however, the Examiner, as humanly possible, does indeed address in the Office Action those terms or limitations with respect to the references. For instance, as far as "Creating Demand" is concerned and contrary to the Appellant's remarks, Deaton teaches, as reflected in the rejection, using the consumer's buying pattern (market data and/or lifestyle data) corresponding to

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the item or product or by tracking the customer's or consumer's purchase cycle of the product (or the use of the product) to anticipate when the customer may run out of the product and need to buy or re-order or replace the product, wherein the customer's purchase history indicates usage data related to a purchased product and wherein the usage data indicate when this product should be replaced and a (advertising) message or a coupon, associated with the product, is generated and offered to the customer based on said usage data or based on the anticipated replacement time or date and wherein the coupon (promotional message) is printed for the customer at the POS or mailed to the targeted consumer (particular type of consumer) (col.71: 31-67; col. 10: 30-67).

Further, the Appellant submits that the Examiner simply states that "market data include lifestyle data, which maybe inferred therefrom" and one cannot infer with any degree of accuracy that the consumer belongs to a certain class or demographics, etc. Thus, the consumer lifestyle information is missing from Deaton. Here, contrary to the Appellant's position, the Office Action does address the consumer lifestyle information, which can be obtained using different methods including inferring the lifestyle data from market data or purchase history data as featured in the rejection. The Appellant has failed to feature here what he considers to be "consumer lifestyle data" and how it differs from the one described in the Office Action, which is supported in the art as an ordinary skilled artisan would have concluded. In fact, the specification merely describes, on page 2 and lines 13-15, that a purchase triggering maybe based upon the vast amounts of consumer **marketing and lifestyle data that is routinely collected**

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on modern consumers. Moreover, the specification, on page 11 and lines 30-34, discloses that the consumer lifestyle information is similar to the extensive demographic and socio-economic consumer formation. As best understood here, it appears that market data and lifestyle data form a single entity and may, at times, be used interchangeably. Here, inferring the lifestyle data from the market data is not deemed improper since the manner in which the lifestyle data were obtained or the source of the lifestyle data does not immediately affect the functionality of the present system. **Additionally~ Deaton teaches using a consumer's zip code and marital status information in demographic (lifestyle) analysis. In short~ Deaton teaches using a consumer's purchase history data (market data) and demographic (lifestyle) data to offer a particular item to the consumer (creating demand).** See col 34: 55-67; col 61:59 to col 62:56.

Regarding claim 53, Appellant also contends that Deaton is silent in the in the context of promoting a beverage (drinkable liquid). The Examiner completely and respectfully disagrees with the Appellant's contention. Indeed, the Deaton's Patent is about product promotion and wherein a promoted product, involved in a promotion, may include a food item and/or a beverage or drinkable liquid, such as a coffee brand, wine, drink, soda, coca, cola, etc (Col. 71: 30-46; col. 72:11-14; col. 72: 59-64; Tables 7-10).

Moreover, regarding claims 59-65 and 67, Appellant argues, among other things, that there is no conversion rate or profit margin determination in the Deaton's reference. First, the claim limitations, as best understood, were fully addressed in the Office Action. Second, redemption data regarding discount coupons (messaging, merchandizing),

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associated with one or more identified items, and redeemed by identified consumers are collected and stored in a database for further processing or market analysis so that the effectiveness (conversion rate) of the discount coupon distribution program can be measured, as anticipated by Deaton (col. 71:31-45; col. 4:52 to col. 7: 54). Moreover, Deaton teaches providing one or more discount coupons (messaging), having a specific value, related to one or more items to an identified customer, such as an infrequent customer, to thereby induce the customer to shop more at a local store, in his geographical location, and spend more money (converting the customer from an infrequent customer to a frequent customer) and monitoring whether the customer has redeemed the one or more discount coupons. If the customer fails to take a favorable action or redeem the coupons, then the system is configured to provide one or more coupons, having a more substantial coupon value, to the customer (col. 70:56 to col. 71:17; figs. 27-32).

Fourth of all, regarding the rejections of claims 1, 53, 59 and 67 as anticipated by Anderson, the Appellant argues that the "lifestyle information" featured by Anderson and referred to as demographic information is not the same as the "consumer lifestyle data" recited in the claims. In response, the Examiner submits that the Appellant has failed to describe here what he considers to be "consumer lifestyle data" and how it differs from the one described in the Office Action, which is supported in the art as an ordinary skilled artisan would have concluded. In fact, the specification merely describes, on page 2 and lines 13-15, that a purchase triggering maybe based upon the vast amounts of consumer **marketing and lifestyle data that is routinely collected on modern**

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consumers. Moreover, the specification, on page 11 and lines 30-34, discloses that the consumer lifestyle information is similar to the extensive demographic and socio-economic consumer information. As best understood, the specification of the present Application considers lifestyle data to be similar to demographic data and so does Anderson. Further, the manner in which the lifestyle data were obtained or the source of the lifestyle data does not immediately affect the functionality of the present system. Thus, Anderson does indeed anticipate the claim limitations.

All in all, the Examiner wants to remind the Appellant that features that are inherent in the art or widely used in the industry need not be disclosed in a reference in order for these features to be anticipated by the current prior art; in other words, failure of those skilled in the art to contemporaneously recognize an inherent property, function or ingredient of a prior art does not preclude a finding of anticipation (MPEP 2131.01 (III)).

Therefore, the Appellant's request for allowance or withdrawal of the last Office Action has been fully considered and respectfully denied in view of the foregoing response since the Appellant's arguments as herein presented are not plausible and thus, the rejections should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

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Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Jean D. Janvier/
Primary Examiner, Art Unit 3688
December 1, 2008


Conferees:

James W. Myhre /J.W.M./
Supervisory Patent Examiner, Art Unit 3688

Vincent Millin /V.M./
Appeals Practice Specialist



A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:



WYNN W. COGGINS
TECHNOLOGY CENTER DIRECTOR